

NOT DESIGNATED FOR PUBLICATION
DIVISION III

ARKANSAS COURT OF APPEALS

SAM BIRD, Judge

CACR05-223

NOVEMBER 8, 2006

ALAN D. WILLIAMS

APPELLANT

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT
[NO. CR-03-252-3B]

V.

HON. KIRK JOHNSON, JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Alan D. Williams entered a conditional plea of nolo contendere to the charge of possession of a controlled substance with intent to deliver, reserving under Ark. R. Crim. P. 24.3(b) the right to appeal the trial court's denial of his motion to suppress. He was adjudicated guilty and was sentenced to twenty-five years in the Arkansas Department of Correction. Williams's sole point on appeal is that the trial court erred in denying his motion to suppress. We disagree and affirm the conviction.

Williams was arrested on the morning of March 14, 2003 when Arkansas State Police officers discovered marijuana and cocaine in the automobile that he was driving. At a hearing on his motion to suppress, Williams challenged the initial traffic stop and the

subsequent search of his vehicle. Highway patrol officers Trooper Darren Neal and Corporal Jeffrey L. Thomas were the only witnesses who testified at the hearing.

Trooper Neal stated that his highway patrol duties on March 14, 2003 included drug interdiction in Miller County. He testified that the following events took place. Neal was parked in a turn-around near the four-mile marker on Interstate 30, and Corporal Thomas, a certified canine handler, was parked in the median next to him. Neal activated his radar when he observed a white Chevrolet Malibu in the seventy-mile-an-hour zone and estimated that it was traveling at seventy-five miles an hour. The radar, which locked on the car “a couple hundred yards” from Neal’s location, showed a speed of seventy-four.

Neal caught up with the Chevrolet, turned on his blue lights, pulled the car over at around the seven-mile marker, and approached the front passenger side. Coy Jackson was riding in the front seat and Williams was the driver. Neal asked for a driver’s license, insurance, and registration, which were provided to him. Neal wrote Williams a warning ticket after determining that all the papers were in order.

Neal testified that, while standing at the car’s passenger window, he “saw an empty cigar box in the front floorboard on the passenger’s side” and thought that he “could smell a faint, a very very faint odor of burnt marijuana coming from inside the car.” Neal said that, in his experience, it was common for individuals to hollow out cigar tobacco and replace it with marijuana to make hand-rolled cigars commonly referred to as blunts. He stated that “the cigar box combined with the faint odor” increased his suspicion of the possibility that

contraband was inside the car. Neal testified that he did not give Williams his warning ticket because the traffic stop was not concluded. Neal stated, "I saw . . . and smelled things when I approached that car that indicated to me that this might need to be investigated further."

Neal acknowledged that he did not mention the faint odor of marijuana when he wrote the facts of probable cause on the incident report. He testified that, although the report did not indicate that he smelled marijuana or saw the cigar box, he "took a photo that depicted that."

Neal stated that he radioed Corporal Thomas to come to the scene with his drug dog, Sita. Neal ran driver's license checks on both Williams and Jackson, and he also checked their criminal history on NCIC. Neal testified:

If I had smelled what I believe to be a strong odor that I could definitely say was an odor of marijuana, then I would've had probable cause to have conducted a search on that vehicle. I don't believe I had that at the time. At that point, that is when I called the other officer to the scene. After I made the initial contact with the occupants, I saw the cigar box, I smelled what I believed to be a faint odor, I went back, I radioed for Corporal Thomas to arrive. In the meantime, I'm running checks. Both occupants have controlled substance violations on their criminal history, and we decided to pursue this further.

The returns, which did not come back before Thomas's arrival, indicated that both men had violations of controlled substances.

Thomas arrived about five minutes after Neal first turned on his blue lights. Neal conveyed his suspicion to Thomas that there could be controlled substances in the car, and Thomas walked Sita around the outside of it. When Thomas indicated to Neal that the dog alerted, a search of the car was conducted. Marijuana and a hand-rolled marijuana cigarette

were found in the center console, and a brown paper sack lay under the driver's seat. Inside the sack, wrapped in a paper towel and a Zip-Lock bag, was a white powder that later proved to be cocaine. Williams and Jackson were arrested at that point.

Corporal Thomas reiterated Neal's testimony that the officers had been apart for about five minutes when Neal requested that Thomas come to the location around the seven-mile marker and "sweep" or walk around Williams's car with the canine. Thomas testified, "[Neal] indicated to me that he thought that he had smelled the faint odor of marijuana but he was not positive. We did not think that we could search the car right then." Thomas related that he put Sita inside the car after she alerted on the outside, that she alerted on two locations inside, and that marijuana and apparent cocaine were found when the officers conducted their search.

In denying Williams's motion to suppress, the trial court found that Trooper Neal, in performing routine tasks pursuant to a valid traffic stop, developed "a reasonable suspicion that criminal activity was taking place. . . . And that this would give the officers probable cause to conduct a greater search in greater scope and depth." Williams now challenges the validity of his detention after Trooper Neal stopped him for speeding and wrote the warning ticket.

Williams asserts that the legitimate purpose of the traffic stop had been concluded and that his further detention was unlawful. He asserts that Trooper Neal had the duty to return Williams and his passenger's paperwork and to allow them to leave after Neal's investigation

related to the traffic stop was completed. Williams argues that neither an innocuous item such as a box of cigars, nor an odor so faint that the officer could not positively identify it as marijuana, could possibly lead to an objective and particularized suspicion that the occupants of the car were engaged in criminal activity, as is required by Rule 3.1, and that imagination and conjectural suspicion were the only basis for Neal's detaining Williams past the legitimate purpose of the traffic stop. We do not agree.

Under Ark. R. Crim. P. 3.1, a detention without arrest may transpire under these circumstances:

A law enforcement officer lawfully present in any place may, in the performance of his duties, stop and detain any person who he reasonably suspects is committing, has committed, or is about to commit (1) a felony, or (2) a misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct. An officer acting under this rule may require the person to remain in or near such place in the officer's presence for a period of not more than fifteen (15) minutes or for such time as is reasonable under the circumstances. At the end of such period the person detained shall be released without further restraint, or arrested and charged with an offense.

The rule is precise in stating that the reasonable suspicion must be tied to the commission of a felony or a misdemeanor involving forcible injury to persons or property. *Sims v. State*, 356 Ark. 507, 157 S.W.3d 530 (2004). "Reasonable suspicion" is defined by Ark. R. Crim. P. 2.1 as "a suspicion based on facts or circumstances which of themselves do not give rise to the probable cause requisite to justify a lawful arrest, but which give rise to more than a

bare suspicion; that is, a suspicion that is reasonable as opposed to an imaginary or purely conjectural suspicion.”

In reviewing the trial court’s denial of a motion to suppress evidence, the appellate court conducts a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to inferences drawn by the trial court. *Sims, supra*. A police officer may draw inferences based on his own experience in deciding whether probable cause exists, and the appeals court gives due weight to a trial court’s finding that the officer was credible and the inference was reasonable. *Davis v. State*, 351 Ark. 406, 94 S.W.3d 82 (2003). The reviewing court must defer to the superior position of the trial court to pass upon the credibility of witnesses. *Id.*

In *Adams v. State*, 26 Ark. App. 15, 758 S.W.2d 709 (1988), where a police officer smelled the strong odor of marijuana when a car window was rolled down, he had reasonable suspicion that the car’s occupants were committing, had committed, or were about to commit a crime that authorized the officer to detain them for a reasonable period of time under Rule 3.1. Likewise, in *Brunson v. State*, 327 Ark. 567, 572, 940 S.W.2d 440, 542 (1996), where a police detective conducted a search because he smelled “an odor of marijuana” or “marijuana smoke” coming from a vehicle, he had reasonable cause to believe that an offense had been committed or was being committed.

We agree with the State that the strength or slighness of the marijuana odor is of no import on the issue here, which is whether Trooper Neal had reasonable suspicion that Williams was engaged in criminal activity. We hold that Trooper Neal's detection of a "very very faint odor of burnt marijuana" gave him reasonable suspicion that Williams was committing a felony drug offense or misdemeanor involving danger to persons or property, and that the brief detention for the dog sniff did not violate Ark. R. Crim. P. 3.1.

This case is unlike *Lilley v. State*, 362 Ark. 436, ___ S.W.3d ___ (2005), where the supreme court held that a one-way car rental, a rental in another person's name, nervousness, and the smell of air freshener did not give an officer reasonable suspicion to detain Lilley further for a canine sniff of his car after the traffic stop was concluded. In addition to Trooper Neal's testimony that he smelled the faint odor of burnt marijuana in William's vehicle, there was testimony that Neal observed a cigar box in the floor, that in Neal's experience individuals were known to replace tobacco from cigars with marijuana, that Neal reported the faint smell of marijuana to Corporal Thomas, and that Williams and his passenger had previous controlled-substances violations. Under the totality-of-the-circumstances test, the trial court did not err in finding that Neal had a reasonable suspicion that Williams was engaged in illegal drug activity; this in turn gave the officers grounds to continue the detention to investigate further and to conduct the canine sniff.

The trial court's denial of the motion to suppress is affirmed.

Affirmed.

GLADWIN and ROAF, JJ., agree.